

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to)
Investigate the Implementation)
Of Feed-in Tariffs.)
_____)

DOCKET NO. 2008-0273

ORDER ESTABLISHING HEARING PROCEDURES

FILED

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PUBLIC UTILITIES
COMMISSION

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ORDER ESTABLISHING HEARING PROCEDURES

By this Order, the commission sets the procedures for the panel hearing scheduled for April 13 - 17, 2009.¹

I.

Background

By Order Initiating Investigation, filed on October 24, 2008, the commission opened this docket to examine the implementation of feed-in tariffs in the service territories of HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), MAUI ELECTRIC COMPANY, LIMITED ("MECO"), and HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO").² In that order, the commission directed the parties to file a stipulated procedural order setting forth the issues, procedures, and schedule to govern this proceeding.

¹The commission issues this Order in advance of the prehearing conference scheduled for April 6, 2009. Accordingly, the parties may address any questions that arise from this Order at the prehearing conference.

²HECO, MECO and HELCO are collectively referred to as the "HECO Companies."

Thereafter, on January 20, 2009, the commission approved, with modifications, the proposed Stipulated Procedural Order submitted on December 22, 2008, by the HECO Companies, the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), the DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM ("DBEDT"), the CITY AND COUNTY OF HONOLULU, the COUNTY OF HAWAII, SEMPRA GENERATION, and HAWAII HOLDINGS, LLC, doing business as FIRST WIND HAWAII ("First Wind"). The commission, however, modified the Statement of Issues, and adopted the Regulatory Schedule proposed by HAIKU DESIGN AND ANALYSIS ("HDA") with certain modifications.³

As suggested in the Statement of Issues set forth in the Procedural Order, the commission will decide in this proceeding (a) whether feed-in tariffs for renewable energy are desirable; and, if so, (b) what rights and obligations those tariffs should establish. The purpose of the panel hearing is to assist the commission in making these decisions.

II.

Hearing Procedures and Organization

The panel hearing, which was noticed for April 13 - 17, 2009, is scheduled to begin at 9 AM and end at approximately 5:30 PM, with morning and afternoon breaks and a 90-minute lunch break. Consistent with prior panel hearings (e.g.,

³Order Approving the HECO Companies' Proposed Procedural Order, as Modified, filed on January 20, 2009 ("Procedural Order").

Docket Nos. 03-0371, 03-0372, 05-0069), the commission will establish panels of witnesses. For each panel, there will be room at the hearing table for one expert per party. That expert should be the person best able to address that panel's subject area. Where a question arises that falls outside of that person's expertise, that person may ask a colleague to come to the table to answer the question.

Mr. Scott Hempling, Executive Director of the National Regulatory Research Institute, the commission's consultant, will be moderating the panel hearing. Consistent with prior panel hearings, Mr. Hempling will direct commission questions to specific panel members. These questions will have been prepared by commission staff and consultant in advance, and will be asked by Mr. Hempling, with follow-up questions by commissioners and staff, if deemed necessary. However, unlike previous panel hearings where there was an opportunity within each panel for parties to question each other once the commission's moderator had completed his questions, such inter-party questioning is not feasible given twenty-two parties and tight time constraints. Consequently, the commission's moderator will emphasize areas of disagreement so that the exchange of views associated with cross-examination still can occur.

The hearing will consist of eight distinct panels representing the major subject areas requiring commission decisions. Those panels are:

- I. Given the four existing renewable producer options (Schedule Q, net metering, competitive bid, and non-bid PPAs), what contribution would FiTs make toward achieving Hawaii's renewable energy goals?
- II. What are the physical limitations on the utility's ability to purchase renewables?
- III. What are the appropriate criteria for eligibility to sell under FiT tariffs?
- IV. What decisions are necessary to ensure that FiT rates are just and reasonable, as required by Hawaii law?
- V. What non-rate terms are necessary to make FiTs just and reasonable?
- VI. Utility cost recovery: What principles should apply?
- VII. What are the appropriate processes for accepting and interconnecting FiT projects?
- VIII. If the commission does approve FiTs, what actions can it take to keep total costs reasonable?

These panel areas are consistent with the issues set forth in the Procedural Order. However, to avoid confusion and provide additional clarity, the commission will replace the issues set forth in the Procedural Order with the issues set forth above.

While the panels will occur in the order set forth above, the commission has not yet determined the precise time allocation for each panel. It will provide notice of the time allocation no later than April 8, 2009.

In addition, to assist the parties' preparation for the hearing, the commission has identified the decisions the commission must make once the record closes for each of the

eight panels. The commission has also identified questions whose answers will help the commission make those decisions.

The decisions and questions for each panel are set forth in Exhibit A. The decisions identified by the commission in Exhibit A may be further supplemented by the parties. If there are any decision items that should be added, the parties shall inform the commission in writing by April 6, 2009.

The questions identified in Exhibit A are intended to help guide the parties' preparation. There will not be a one-to-one correspondence between the questions listed in Exhibit A and the questions asked orally at the hearing; the oral questions will be more numerous and specific than the questions in Exhibit A.

As noted above, for each panel, there will be room at the hearing table for one expert per party. By April 6, 2009, each party shall file the name and title of the expert who will appear for each panel. There are some issues on which multiple parties have articulated a joint position. In those situations, the commission encourages the parties to appoint a single expert.

Because of the large number of issues and the limited number of hours, it is inevitable that a panel period will end without every party making every desired point. For that reason, the commission will entertain oral closing statements on Friday afternoon, followed by written submissions as set forth in the Procedural Order. Each party will have the opportunity to present closing statements of five minutes each (fifteen minutes for the HECO Companies collectively). The commission will not

hear opening comments. The person offering the closing comments can be either a lawyer, witness or authorized representative of each party.

III.

Orders

THE COMMISSION ORDERS:

1. The issues, as identified in the Order Approving the HECO Companies' Proposed Procedural Order, as Modified, filed on January 20, 2009, are replaced with the following issues:

- I. Given the four existing renewable producer options (Schedule Q, net metering, competitive bid, and non-bid PPAs), what contribution would FiTs make toward achieving Hawaii's renewable energy goals?
- II. What are the physical limitations on the utility's ability to purchase renewables?
- III. What are the appropriate criteria for eligibility to sell under FiT tariffs?
- IV. What decisions are necessary to ensure that FiT rates are just and reasonable, as required by Hawaii law?
- V. What non-rate terms are necessary to make FiTs just and reasonable?
- VI. Utility cost recovery: What principles should apply?
- VII. What are the appropriate processes for accepting and interconnecting FiT projects?
- VIII. If the commission does approve FiTs, what actions can it take to keep total costs reasonable?

2. Any comments or suggested changes to the commission's proposed decisions, as set forth in Exhibit A, are due on April 6, 2009.

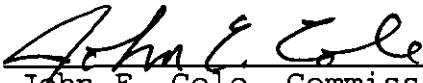
3. By April 6, 2009, the parties shall inform the commission in writing as to the expert, who will be assigned for each panel, including any joint experts.

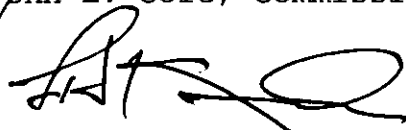
4. This order shall control the subsequent course of the hearing, unless modified or otherwise ordered by the commission. This order shall supersede the Order Approving the HECO Companies' Proposed Procedural Order, as Modified, filed on January 20, 2009, where there is a conflict and shall supplement it in all other respects.

DONE at Honolulu, Hawaii APR - 1 2009.

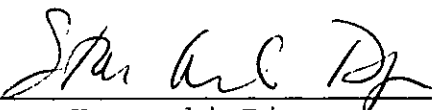
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

By: 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Stacey Kawasaki Djou
Commission Counsel

2008-0273.laa

Docket No. 2008-0273

Panel Topics, Commission Decisions and General Hearing Questions

- I. Given the four existing renewable producer options (Schedule Q, net metering, competitive bid, and non-bid PPAs), what contribution would FiTs make toward achieving Hawaii's renewable energy goals?**

Commission Decisions

- 1. Should the Commission state a quantitative goal for renewables purchases in Hawaii generally and for FiTs specifically?**
- 2. Are there gaps or suboptimalities in present programs that make FiTs necessary to achieve Hawaii's goals?**
- 3. Net Metering: Should net metering be continued, without change, in the presence of a FiT? If not, what renewables (technologies and sizes) should Net Energy Metering apply to and what renewables should FiT apply to?**
- 4. Schedule Q: Should Schedule Q be continued, without change, in the presence of a FiT? If not, what renewables (technologies and sizes) should Schedule Q apply to and what renewables should FiT apply to?**
- 5. Negotiated power purchase agreements: Should present practices be continued, without change, in the presence of a FiT? If not, what renewables (technologies and sizes) should present practices apply to and what renewables should FiT apply to?**
- 6. Competitive bidding: Should present practices be continued, without change, in the presence of a FiT? If not, what renewables (technologies and sizes) should present practices apply to and what renewables should FiT apply to?**

- A. What is the desired quantity of renewable energy from the FiT?**

How much renewable energy does the FiT need to add for Hawaii to achieve the goals set out in the HCEI Agreement or the RPS?

EXHIBIT A

- B. Do the present renewables programs, individually and cumulatively, produce the desired quantity of renewable energy cost-effectively with reasonable certainty? If not, what are the gaps?
1. Competitive bidding
 - a. *How effective has competitive bidding been in adding renewable energy?*
 - b. *What factors have contributed to the length and results of the competitive bidding process?*
 2. Negotiated power purchase agreements
 - a. *What are the current procedures for receiving negotiated power purchase agreements?*
 - b. *How effective have negotiated power purchase agreements been at adding renewable energy?*
 - c. *What would the role of negotiated power purchase agreements be with a FiT?*
 3. Net metering
 - a. *How effective has net metering been in adding renewable energy?*
 - b. *Should net metering be continued in the presence of a FiT? If so, under what terms and conditions?*
 4. Schedule Q

Should Schedule Q be continued in the presence of a FiT for eligible technologies?
- C. What FiT design elements are necessary to fill specific gaps and eliminate obstacles in the present programs?

II. What are the physical limitations on the utility's ability to purchase renewables?

Commission Decisions

Concerning standards and procedures to ensure that FiT sales promote reliability: Should they be part of the tariffs, or should they exist outside the tariff (e.g., in interconnection rules or in project-by-project negotiations)?

Note: Other necessary decisions on reliability will occur under other parts of this outline. The purpose of this section on physical limitations is to establish facts.

- A. Methods for measuring and mitigating reliability effects of additional renewable resources
 - 1. *Which reliability constraints are currently known and which will become clearer through additional examination?*
 - 2. *How will system upgrades affect reliability constraints?*
- B. Reliability effects of an inter-island transmission line, demand response, and energy efficiency programs

How will each of these initiatives affect the amount of renewables that can be reliably integrated?
- C. Current and future curtailment
 - 1. *What is the current level of curtailment for renewable energy projects and how is it likely to change?*
 - 2. *Which resources are currently curtailed and which are likely to be curtailed in the future?*
- D. Rule 14 restrictions
 - 1. *What is the basis for current Rule 14 restrictions on intermittent penetration levels and remote control?*
 - 2. *What would be the consequences of modifying such restrictions?*

- E. Likely effect on curtailment of different technologies

What are the reliability benefits and consequences of additional solar PV, biomass, and small wind projects?

- F. Role of reliability considerations in the FiT design

Should the tariff state the possibility that the Commission can suspend the FiT based on reliability, safety or other concerns?

III. What are the appropriate criteria for eligibility to sell under FiT tariffs?

Commission Decisions

- 1. Which technologies should be eligible for the FiT?**
- 2. What is the maximum and minimum capacity of projects that should be eligible for the FiT?**
- 3. Should projects owned by utilities or their affiliates be eligible for the FiT and, if so, under what conditions?**

- A. Technology eligibility criteria (other than maximum size)

- 1. Which of the following criteria should be prerequisites or considerations for FiT eligibility?*
 - a. Interconnection feasibility
 - b. Maturity of the technology
 - c. Hawaii experience
 - d. Effect on system reliability
 - e. Geographic dispersion
 - f. Permitting uncertainty
 - g. Other
- 2. How do the above criteria apply to each technology?*

B. Application of criteria (other than size) to project technologies

Based on the above criteria, which technologies should be eligible for the FiT?

- a. Solar PV
- b. Concentrated solar
- c. Onshore wind
- d. Hydro
- e. Biomass
- f. Waste-to-energy
- g. Geothermal
- h. Other (offshore wind, biofuels and hybrid facilities)

C. Project size parameters (maximum and minimum capacity)

1. Considerations

- a. FiT goals of distributed generation

Should the FiT design encourage project diversity, including distributed generation?

- b. Reliability

How would large projects being eligible for the FiT affect reliability and system planning?

- c. Cost effect of large projects

- i. *Would FiT eligibility for large projects increase the FiT costs for ratepayers? If so, to what extent?*
- ii. *Would larger projects feature greater cost variability than smaller ones due to variations in interconnection costs?*
- iii. *If project costs varied markedly, would FiT rates be just and reasonable?*
- iv. *Should FiT capacity limits take into account, and vary with, the cost of various technologies?*

2. Options for project capacity limits

a. *How high should any FiT capacity limits be?*

- i. Unlimited
- ii. Technology-specific maximum capacity limits

If project capacity limits are technology-specific, how should they be determined?

- iii. Other caps (e.g., below the minimum allowed by the present competitive bidding policy)

On what other basis should project capacity limits be established?

D. *Under what conditions, if any, should projects owned by the utility or its affiliates be eligible for the FiT?*

IV. What decisions are necessary to ensure that FiT rates are just and reasonable, as required by Hawaii law?

Commission Decisions

- 1. Should the FiT facilitate the cost recovery of only the most cost-effective projects, a typical project, or most projects?**
- 2. What is a reasonable return on equity for a FiT project?**
- 3. What cost and performance information is needed to calculate FiT rates?**
- 4. What are appropriate methodologies for calculating FiT rates?**
- 5. What interconnection costs should the FiT developer bear?**
- 6. How should FiT participants be compensated for curtailment?**
- 7. How should the FiT rates consider tax policies for renewables?**
- 8. Should the FiT rate to which a project is otherwise entitled, be adjusted downward to reflect any rebates or other financial benefits received by the project?**
- 9. Should the FiT automatically reflect changes in tax law and renewables programs or should such changes take place in periodic updates?**
- 10. How should the FiT account for project reliability benefits or lack thereof?**
- 11. Once a project receives a FiT rate, under what circumstances should its FiT rate change?**
- 12. Should the FiT contain baseline rates for new technologies?**
- 13. How should FiT rates account for inflation?**
- 14. How could FiT rates comply with the "avoided cost" provision on HRS § 269-27.2?**

A. Initial FiT rates

1. What is the purpose of the rate?

a. Cost recovery

Should the FiT facilitate the cost recovery of only the most cost-effective projects, a typical project, or most projects?

b. Reasonable return on equity

i. *What is a reasonable return on equity for a FiT project?*

ii. *Should returns decline over time to encourage immediate development?*

2. What cost information is necessary to get the rate right?

a. Cost information

i. *What cost information have the parties provided and what is needed to determine FiT rates?*

ii. *Are CSP costs in Hawaii similar to PV costs?*

b. Performance information (e.g., capacity factor, project life, project degradation rate)

i. *Is the performance of Hawaii renewable projects similar to that elsewhere, so that non-Hawaii performance information could be used to calculate FiT rates?*

ii. *What are reasonable sources for renewable energy performance information?*

c. Interconnection costs

What interconnection costs should the FiT developer bear?

d. Other – Tax credits, utility rebates and loan programs

i. *Should the FiT rates assume developers can use all available tax credits and accelerated depreciation?*

- ii. *Should FiT rates be adjusted downward to reflect rebates and other financial incentives?*
 - iii. *Should FiT rates automatically reflect changes in tax law and other policy incentives or should such changes take place in periodic updates?*
- 3. What methodologies produce appropriate rates?
 - What mathematical calculations should be used to determine initial FiT rates?*
- 4. Adjustments to compensation due to utility's need to curtail seller's output
 - Should FiT projects be compensated for actual curtailment or should FiT rates consider estimated curtailment?*
- 5. FiT rates from international FiTs
 - a. *Should the FiT rates be derived from rates of foreign FiTs?*
 - b. *How should FiT rates derived from foreign FiTs be adjusted?*
- 6. Adjustments for technologies that provide (or do not provide) system benefits
 - How, if at all, should FiT rates reflect reliability benefits or lack thereof from renewable energy projects?*
- 7. Special rates for technologies lacking reliable cost information
 - Should the FiT contain baseline rates for additional technologies?*
- B. Changes to initial FiT rates
 - 1. Inflation adjustment
 - a. *Should FiT rates contain estimated inflation or should the rates be adjusted for actual inflation?*
 - b. *What estimated inflation or indexes should the FiT use?*

2. Mid-course rate change if developer income varies from expectations (up or down)

Once a project receives a FiT rate, under what circumstances should its FiT rate change?

- i. Increased curtailment
- ii. Changes in cost or performance
- iii. Other

C. Consistency of FiT rates with "avoided cost" provision on HRS § 269-27.2

1. *Could the FiT exceed the utility's avoided cost without violating HRS § 269-27.2?*
2. *Could the avoided cost rate be defined as the cost of complying with the state RPS or potential climate change legislation?*
3. *Which types of projects are needed to meet Hawaii's RPS mandates?*

V. What non-rate terms are necessary to make FiTs just and reasonable?

Commission Decisions

1. **What should be the term of the FiT?**
2. **Is there a need for a service contract along with the feed-in tariff, or should the tariff itself contain all the necessary legal rights and obligations?**
3. **What should be the rights and obligations associated with project output on expiration of the FiT term?**
4. **What FiT attributes should be subject to periodic reexamination?**
5. **When should periodic reexaminations occur?**
6. **What data should FiT projects have to submit?**
7. **Who should receive renewable energy credits and green attributes?**
8. **Should the tariff state the possibility that the commission can suspend the FiT based on reliability concerns?**

A. Parameters of the utility's purchase obligation

1. Duration

What is the appropriate term of the FiT?

2. Legal status

Is there a need for a service contract along with the feed-in tariff, or should the tariff itself contain all the necessary legal rights and obligations?

3. Compensation after FiT term conclusion

What should be the rights and obligations associated with project output on expiration of the FiT term?

B. FiT reexamination

1. Subjects for reexamination

What criteria and data should be utilized when considering each of the following adjustments?

- i. Add technologies
- ii. Adjust rates
- iii. Adjust size eligibility
- iv. Adjust purchase quantity caps

2. Methods of reexamination

a. Frequency

How frequent should periodic FiT reexaminations be?

b. Triggers (e.g., based on total cost, total capacity)

What events, if any, should trigger FiT reexaminations?

3. Other-data requirements

What, if any, data should FiT participants and the utility be required to provide to inform updates?

C. Renewable energy credits

Should the FiT establish entitlement of the value of any renewable energy credits created by future legislation? If so, who (as between the developer and the utility) should receive the value?

VI. Utility cost recovery: What principles should apply?

Commission Decisions

1. Are either additions to rate base or assured recovery for the utility appropriate?
2. How should FiT costs be allocated to the customers of the three HECO companies?

A. Utility compensation or protection

Are additions to rate base or assured recovery for the utility appropriate?

B. Allocating costs among HECO subsidiaries

How should FiT costs be allocated to the customers of the three HECO companies?

VII. What are the appropriate processes for accepting and interconnecting FiT projects?

Commission Decisions

1. What queuing and interconnection procedures should FiT projects use?
2. What, if any, modifications should be made to Rule 14 provisions for penetration of generating sources and remote control?

A. Existing and alternative queuing and interconnection procedures

1. *Are the existing queuing and interconnection procedures appropriate for the FiT?*
2. *Are there other appropriate models for queuing procedures, such as procedures used by the Midwest Independent System Operator?*
3. *What, if any, modifications should be made to Rule 14 provisions for penetration of generating sources and remote control?*

B. Milestone obligations

What are appropriate milestones for a developer to gain entrance to, and remain in, the queue?

C. Deposit obligation

What are appropriate developer deposit obligations for the interconnection queue?

D. Queuing priority for particular technologies (e.g., based on system benefit priority)

Should queuing priority be afforded to technologies that provide system benefits?

E. Different processes for large and small projects

1. *How do existing and proposed queuing and interconnection procedures differ for small and large projects?*
2. *Should the queuing and interconnection process differ for small and large projects?*

VIII. If the Commission does approve FiTs, what actions can it take to keep total costs reasonable?

Commission Decisions

1. Should the commission limit the FiT scope (i.e., eligible technologies, project size) initially? If so, at what rate should the commission then expand the scope?
2. Should the commission establish purchase caps as a means of keeping total costs reasonable? If so, what purchase caps should the FiT contain?
3. Should the FiT rates decline over time?
4. Should the tariff state the possibility that the commission can suspend the FiT based on cost concerns?

A. Calculating the FiT cost

1. Basic calculation of total FiT costs

What are defensible methods for calculating the total cost of the FiT?

2. Costs of reducing existing energy procurement

What, if any, short-term costs, including contractual provisions, would the utility incur to reduce purchases from fossil-fuel generators?

3. Administrative costs

What are the likely administrative costs for the utility of the FiT and how will they be collected?

4. Infrastructure necessary to integrate FiT sellers

What system upgrades not borne by developers would be needed to facilitate various proposed FiTs?

B. Caps on FiT purchases

1. *Should the FiT contain caps on purchases?*
2. *Should any FiT purchase caps be annual?*
3. *What should the basis be for any FiT caps?*
 - a. No caps
 - b. Statewide
 - c. Island-specific
 - d. Technology-specific
4. *If FiT purchase caps are technology-specific, how should they be determined for each technology?*

C. Methods of capping total FiT cost to ratepayers other than limiting eligible project technology and maximum capacity or including annual purchase caps

1. Gradual increase in maximum quantities purchased

Should the initial FiT be limited and increase over time to contain costs?
2. Declining FiT rates
 - a. *Should the FiT feature declining rates based on milestones?*
 - b. *If the FiT features declining rates based on milestones, how should the milestones and the size of incremental rate declines be determined?*
3. Events that trigger caps or moratoriums

Should the tariff state the possibility that the commission can suspend the FiT based on cost concerns or conditions?

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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